The Solicitors' Journal

Vol. 92 January 10, 1948 No. 2

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CURRENT TOPICS

New Year Honours

THE Hon. Sir MALCOLM MARTIN MACNAGHTEN, who recently retired after nineteen years' service as a puisne judge in the King's Bench Division, was made a Privy Councillor in the New Year's Honours List. We extend to him our congratulations and wish him many useful and happy years in the public service to which he has deservedly been called. The Hon. Sir HUMPHREY FRANCIS O'LEARY, Chief Justice of New Zealand, was made a Privy Councillor at the same time. Among other honours conferred by the King in the New Year Honours of interest to lawyers are the Knighthoods conferred on Mr. LESLIE CECIL BLACKMORE BOWKER, City Remembrancer since 1933, who entered the Civil Service in 1906 and was called to the Bar in 1922; on His Honour TOM EASTHAM, K.C., the Senior Official Referee; and on Dr. WILLIAM IVOR JENNINGS, Vice-Chancellor of the University of Ceylon (readers will remember his lectures and text-books in this country, particularly on local government matters); the G.C.B. awarded to Sir THOMAS JAMES BARNES, H.M. Procurator-General and Treasury Solicitor; the G.B.E. awarded to Sir CYRIL JOHN RADCLIFFE, K.C., "for services to the British Commonwealth"; the G.C.I.E. conferred on Sir MAURICE LINFORD GWYER, K.C., Vice-Chancellor of Delhi University; the K.B.E. to Sir JOHN FORSTER, K.C., President of the Industrial Court, and to Sir WILLIAM PATRICK SPENS, Chief Justice of India; and the C.B.E. to Mr. GERALD RICHARD PALING, Assistant Director of Public Prosecutions.

The Hilary Law Sittings

IT is not easy to discern any marked trend in the volume of business disclosed by the lists of cases set down for hearing during the Hilary Law Sittings, which begin on 12th January. In the King's Bench Division there are 370 actions for hearing, compared with 447 in the corresponding term last year. Of these, 157 are long non-jury actions and 178 are in the short non-jury list. The number of long non-jury cases is therefore unchanged as compared with last year, but the short non-jury list shows a decrease of 98. There are 14 short causes (5 last year) and 12 commercial list cases (4 last year). The Chancery Division, on the other hand, shows an increase with 206 causes and matters as against 163 last year. There are 84 non-witness and 82 witness actions (77 and 38 respectively last year) and 67 companies' matters (66 last year). Admiralty actions remain fairly constant, numbering 7 as against 6 a year ago. A slight decrease in the number of appeals to the Divisional Court is shown, the total being 195 (200 last year). There are, however, only 19 appeals in the Divisional Court list proper, a decrease of 21; in the Revenue Paper there are 21 (31 last year); and in the Special Paper 7 (5 last year). Appeals under the Pensions Appeal Tribunal Acts continue to increase, numbering 141 as against 109 a year ago. There are 5 appeals under the Town and Country Planning Acts and 2 motions for judgment. In the Court of Appeal 298 appeals are down for hearing, an increase of 71 over last year's figure. The increase is mainly due to appeals from the Probate and Divorce Division, which number 63 (13 last year), and from the Chancery Division, where the number has risen from 6 last year to 24. Appeals from the King's Bench Division show little change at 107 as compared with 111 a year ago, and appeals from county courts also remain fairly constant with 89, including 12 workmen's compensation cases (88 and 37 respectively last year). There are also this year 5 appeals from the Admiralty Division.

Sir Arthur fforde

THE appointment of Sir ARTHUR FFORDE as prospective head master of Rugby School is a stimulating example of that imaginative approach to present-day problems which is unhappily all too rare. As a member of the Council of The Law Society for the past ten years and as a member of the Cohen Committee on Company Law Amendment, Sir Arthur fforde has achieved much in and for the profession he is soon to forsake, and his outstanding qualities of judgment and administrative capacity will certainly find full scope in the unfamiliar paths he is now to tread. The governing body of the school are to be congratulated on their boldness and vision in making an appointment which few could have expected, but with which none will quarrel. Solicitors, while feeling that Rugby's gain is the profession's loss, will deem it an honour that one of their number is to follow in the footsteps of the illustrious Dr. Arnold.

Costs on Sales of Land to Local Authorities

THE Council of The Law Society have obtained counsel's opinion on the question of the validity of agreements by local authorities to bind themselves, where a sale of land to them is by agreement, to pay the vendor's solicitors' costs, in spite of rule (11) of the rules applicable to Sched. I of the Solicitors' Remuneration Order, 1883. According to the December, 1947, issue of the *Law Society's Gazette*, counsel is of opinion that an agreement by a local authority to pay scale costs to a vendor of unregistered land (at least in those

cases, and they are the great majority, where s. 82 of the Lands Clauses Consolidation Act, 1845, applies) may be invalid, the proper basis of remuneration being item remuneration. Counsel is further of opinion that there might be a risk of surcharge, if a local authority enters into an agreement to pay scale costs, especially if the amount of such costs exceeds what would have been payable on an item basis as limited by s. 82 of the Lands Clauses Consolidation Act, 1845. Although s. 230 of the Local Government Act, 1933, seems to afford some protection to officers who have acted reasonably, or in the belief that their actions are sanctioned by law, the Council draws attention to the risk of surcharge in view of the large number of members of The Law Society who are local authority officers.

A Universal Copyright Code

THE incompleteness of the international copyright system is not only a genuine grievance of artists and writers, but also a barrier to free intellectual intercourse between nations, and thereby a barrier to peace. One of the major projects of Unesco—the United Nations Educational, Scientific and Cultural Organisation—is to promote a freer exchange of ideas and information across national frontiers. During the nineteenth century, both in the United States and in European countries, it became possible for an author to receive protection for his work even though he was not a national of the country in which it was exploited. In most European countries this came about by the adoption of the principles now known as the Berne Union, and in the U.S.A. by successive legal measures which made possible reciprocal relations with other nations. China and Russia remain outside both the Berne and American systems. Moreover, in principle, there is no regulation against a publishing firm of one country buying a copy of a best-seller in another country, translating the text with a few minor variations and republishing the unauthorised version in every country where the original copyright protection is not recognised. The situation is even more serious in the case of articles in newspapers and periodicals, which are often reproduced in another country's journals where the copyright laws of the author's country are not recognised. During 15th–20th September twelve leading international experts drafted a set of proposals for improving the existing copyright relations between countries which would, in turn, make freer the exchange of literature and periodicals, across national frontiers. Unesco will be represented at the Conference in Brussels in 1948 where revisions of the Berne Convention will be considered.

Doctors and the National Health Service Act

THE Minister of Health and the Secretary of State for Scotland met the Negotiating Committee of the medical profession on 2nd and 3rd December for discussions, and statements setting out the points made by the committee and the Ministers' replies were published on 19th December. The Negotiating Committee's case includes a number of points of interest to lawyers. For instance, it is stated that practically every existing partnership is governed by an agreement. In general, these agreements provide that in certain circumstances, e.g., the retirement, death or sickness of one partner, the other partner or partners shall have an option, and often an obligation, to purchase the share of the partner retiring or dying. The official interpretation of s. 35 of the Act is that all partnership agreements in existence on the appointed day retain their full validity. Sir CYRIL RADCLIFFE, K.C., and Mr. J. H. STAMP, to whom the Negotiating Committee had submitted the question, had both reached the conclusion that the official interpretation was wrong. The Negotiating Committee state that among the consequences of the Ministry's interpretation are that (1) an individual practitioner may be required to pay out a sum of money to purchase a share, the compensation value of which is less than the amount he has paid, and (2) in fulfilling his contractual obligations under a partnership deed a practitioner may be required (*a*) to buy a partner's public practice, the capital value of which he cannot realise, the income from which he cannot receive, and compensation for which is not available to him; or (*b*) to buy a partner's private practice which he cannot sell and in respect of which no compensation is payable from the moneys provided under the Act. The reply of the Minister is that the official interpretation is based on legal advice, and if there are varying opinions on the matter, it is for the courts to decide what is correct; and if the Minister is wrong he "will unhesitatingly seek from Parliament such correction of the Act as will be designed to restore it." The Minister's answer also contains full details of regulations which it is proposed to make to secure that the right proportion of compensation goes eventually to the practitioner who suffers the loss. In exceptional cases which cannot be covered by general provisions, he states that the terms of the partnership may be varied by agreement.

Numbering of Shares and the Stock Exchange

UNDER the Companies Act, 1947, s. 69, it is no longer necessary to give distinctive numbers to issued shares where the whole of a particular class is fully paid up and ranks *pari passu* for all purposes. This provision was recently brought into operation as from 1st December, 1947. The Council of the Stock Exchange has now published a notice stating that abandonment of the numbering of shares automatically invalidates the quotation of such shares, and that any company wishing to avail itself of the section should notify the Share and Loan Department and ask for a quotation in place of the existing one for numbered shares. Quotation, it is stated, will normally be granted where the whole of the shares of that particular class are already quoted, or where one is granted for only part of the issue, if steps are taken to distinguish the quoted from the unquoted shares.

Funeral Insurance

THE text of the Industrial Assurance and Friendly Societies Bill was published on 18th December. It provides for the bringing to an end of existing powers to insure the life of another for funeral expenses, and substitutes the power to insure the life of a parent, step-parent or grandparent for £15, exclusive of any bonus other than guaranteed bonus. The life of a child, grandchild, brother or sister ceases to be insurable. The Bill makes illegal insurances of one's own child in life-of-another form, and prohibits insurances in own-life form under which anything more than a return of premiums would be payable on the death of a child under ten. It will be recalled that under the national insurance scheme coming into operation on 5th July, 1948, a death grant of £20 is payable where the deceased was over eighteen years of age, and there is a descending scale for children. The Bill further proposes that in view of recent changes in the value of money the gross sum for which a friendly society may insure shall be raised from £300 to £500.

A Feudal Survival

AN interesting survival from feudal days in London has recently disappeared, through the partitioning of the small remnant of the funds of the homage jury of the Manor of Fulham between two ancient almshouses, by Mr. J. C. PLATT, of Hammersmith, who was the last survivor of the homage jury. The manor, which at one time embraced the whole of Fulham and Hammersmith, was held continuously by the Bishops of London from A.D. 691 until the last century, when the lordship vested in the Ecclesiastical Commissioners. The homage jury was, in effect, a committee of copyholders appointed to see that the lord or his steward did not abrogate the customs of the manor. The homage jury was enriched from time to time by the taking over of manorial commons by London authorities, and this went on until as late as 1931, compensation having been paid on every occasion when it happened. Until the final partitioning of the homage jury's funds they had been spent on the upkeep of the "Waste Land Almshouses for the comfort of Aged and Decayed Householders belonging to the parish of Fulham and the hamlet of Hammersmith," and for other good works, including periodical dinners for the jurymen.

Taxation

TAXATION IN LEGAL PRACTICE

I. ROUTINE CONVEYANCING

THE extent to which matters of taxation impinge upon general legal work is often a cause of something approaching alarm in solicitors' offices. It is natural that such matters should enter into consideration whenever financial transactions or transfers of property take place, for it is upon such transactions and the legal effect of them on the rights and property of the parties that the structure of the income tax is founded. There is, in fact, much more to tax law than a knowledge of the taxing statutes. Upon a strict interpretation of those statutes depends the liability to tax, or the entitlement to exemption or relief; no such liability can accrue except by express enactment, and no exemption or relief can be claimed except under express statutory authority, save in the sense that a person may be said to be exempt when no charge to tax is applicable to his case. But it frequently requires a lawyer to decide the question whether a given situation comes within the express terms of an enactment. Moreover, many of the situations which do give rise to a charge to tax are of common occurrence in legal practice.

On the footing that knowledge should proceed from the known to the unknown, it is proposed in these columns to examine first some of the more familiar of these situations, beginning with the sale and purchase of land.

The tax most obviously involved in this connection is that imposed by the Income Tax Act, 1918, under the head of Sched. A, called popularly, but significantly, landlord's property tax. Although this is ordinarily payable by the occupier of premises (Rules of No. VII), its burden is spread by the Rules of No. VIII, so as to fall in most cases on the owner and his mortgagee (if any), a tenant bearing only any share which is attributable to his beneficial occupation of the property—the somewhat rare case of the net annual value exceeding the amount of the rent. It follows that a change of ownership involves a change in the incidence of the tax, even though the property sold may be let to a continuing tenant. Accordingly, a solicitor acting for a purchaser is concerned to see that Sched. A tax is discharged or allowed for in apportionments up to the date from which his client becomes responsible for the property. A sitting tenant will be entitled to deduct tax from the payment of rent next after he pays the tax (No. VIII, r. 1). In the case of arrears of tax paid by the tenant in respect of a period when someone else was in occupation (r. 7) or to avoid distraint (r. 10), or where the vendor being assessable to the tax on tenement property (No. VII, r. 8 (*c*)) has made default in payment (No. VIII, r. 9), the deduction may be made from *any* subsequent payment of rent. It is the purchaser who will suffer these deductions. In some circumstances, too, where the landlord and not the tenant is the person assessable under No. VII, r. 8, the purchaser may find himself exposed to proceedings for recovery of tax notwithstanding that he was not the person named in the assessment (Finance Act, 1941, s. 12 and Sched. I).

The normal routine of inspection of the last receipt for Sched. A tax may not be possible in some cases, for the vendor may not have discharged the tax in cash as a separate item. He may, for instance, have been allowed the whole or part against allowances or reliefs not otherwise fully absorbed, or it may have been taken into account in calculating his code number if he suffers P.A.Y.E. deductions. In any such case the purchaser's solicitor's safest course is to insist on the vendor's solicitor obtaining written confirmation from the Inspector of Taxes to whom the vendor renders his tax returns of the fact that there are no outstanding claims for property tax. Indeed, a cautious solicitor may like to have this confirmation in every case, for there appears to be nothing to make the last receipt for property tax conclusive evidence as against the Revenue authorities of all arrears having been cleared. It will probably be appreciated by the Inspector concerned if the purchaser's solicitors will in any case inform him of the change of ownership and of the purchaser's address and tax district. Some solicitors obtain from the vendor a letter signed by or on his behalf and send it to the Inspector.

If the property is assessable under Sched. B and the purchaser is to take over the occupation of it from the vendor, this will also be an apportionable outgoing, and evidence of payment will be required in the same way as for Sched. A.

It is often overlooked that, if any interest is payable on the purchase money, whether under the express terms of the contract or otherwise (see *Re Piggott & G.W. Railway Co.* (1881), 18 Ch. D. 146), this interest is an item of income so far as the vendor is concerned, and comes within the charge to income tax of Case III of Sched. D. It was held in *Bebb* v. *Bunny* (1854), 1 K. & J. 216, that such interest is yearly interest even though it may be payable in respect of a very short period. Income tax is therefore deductible by the purchaser on paying the interest, and the vendor should obtain a certificate of deduction for production as a voucher on returning the income to his Inspector. Whether the purchaser may retain the tax so deducted or whether he must account for it to the Revenue depends upon the source from which the interest is paid (rr. 19 and 21 of the General Rules scheduled to the Income Tax Act, 1918). See the topic of deduction fully discussed in 90 SOL. J. 621 and 91 SOL. J. 75.

Land tax is another matter which should be vigorously investigated by the purchaser's solicitor. Although not an incumbrance on the property so as to require its disclosure by the vendor to a purchaser without inquiry, land tax is a legal interest within s. 1 (2) (*d*) of the Law of Property Act, 1925, and cannot be overreached. The demand is usually included with the demand for Sched. A tax, but as certain exemptions and abatements are applicable to taxpayers with small incomes the position should be ascertained by inquiry of the clerk to the Land Tax Commissioners for the district, whose address is obtainable from the Land Tax Department, Inland Revenue, Somerset House, or from the local Inspector of Taxes. Redemption of land tax is evidenced by a certificate of the Land Tax Commissioners receipted on behalf of the Bank of England and registered in accordance with the Land Tax Redemption Act, 1802, s. 38.

In these days most vendors of landed property make a profit on its sale. The profit on an isolated sale is usually a capital accretion which does not attract income tax. But if the vendor carries on a trade as dealer in landed property, any profit made on a sale by him will fall to be included as a receipt of that trade in computing his liability under Case I of Sched. D. Whether or not a trade is carried on in any particular year of assessment is a question of fact (see the distinction formulated in *California Copper Syndicate* v. *Harris* (1904), 5 Tax Cas. 159), but there are some useful cases indicating the basis of computation of the profits of the trade in some comparatively common circumstances of land development. Thus, in the Scottish case of *C.I.R.* v. *Emery* [1937] A.C. 91, the builders created ground annuals (a sort of perpetual rent charge) which, on selling the properties, they retained in their ownership. It was held by the House of Lords that in ascertaining the amounts of their trading profits the realisable value of the ground annuals should be added to the amount of the sale receipts credited in their accounts.

Frequently when houses on a building estate are sold through a building society, the builders deposit with the society a sum by way of collateral security in order to induce the society to exceed its normal limit of advance. In these circumstances, upon the mortgage moneys being reduced below a certain figure the deposit will be released by the society to the builders. An interesting point arising out of a situation such as this was taken to the House of Lords in the case of *Harrison* v. *Cronk & Sons* [1937] A.C. 185. The question was, in which year of assessment were these deposited sums to be included in the receipts of the builders' trade. It was held that on the sale of a house there should be brought

into account for tax purposes a sum representing the actual value at the time of the sale of the deposit made in respect of the particular house, regard being had to the risk of loss. In the event of an actuarial valuation of the deposit proving impracticable, then only so far as the deposits were released by the society during the trading period in question were they to be brought into account.

The method adopted by the builder, in *Absolom* v. *Talbot* [1944] A.C. 204, was to take a second mortgage for the advance which he made to supplement the normal advance from the building society, and in addition in some cases the purchaser's promissory note. A majority of the House of Lords, while distinguishing *Harrison* v. *Cronk* on the facts, applied the same principles in what Lord Russell of Killowen described as a very special case. The second mortgages and promissory notes were to be brought into account, at their estimated value at that time, in computing the builder's profits for the year in which they were taken. "Z"

MY NEIGHBOUR ON THE ROAD

It is now trite law that the tort of negligence consists in the breach of a duty to take care owed by the defendant to the plaintiff, damage flowing to the plaintiff from the breach. It is a specific tort in itself, and not simply an element in some more complex relationship or in some specialised breach of duty, and has no dependence on contract (see *per* Lord Wright, in *Grant* v. *Australian Knitting Mills* [1936] A.C. 85). Whether there is in any particular case a breach of duty is, of course, almost entirely a question of fact. Whether there exists a duty of care owed by the defendant to the plaintiff is, however, a most interesting question of law. Moreover, the classic answer to this question is only fifteen years old. In *Donoghue* v. *Stevenson* [1932] A.C. 562, Lord Atkin, after defining the narrow limits of the issue before the House of Lords in that case, permitted himself these general observations: "The rule that you are to love your neighbour becomes, in law, you must not injure your neighbour . . . Who, then, in law is my neighbour? The answer seems to be —persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question" (p. 580). The facts of that case certainly demanded a wider consideration of what used to be called proximity of relationship than had been necessary in previous authorities on the subject, but Lord Atkin had by no means said the last word. Indeed, Lord Wright, in *Grant's* case, though he applied the *Donoghue* decision, foresaw that "many difficult problems will arise before the precise limits of the principle are defined: many qualifying conditions and many complications of fact may in the future come before the courts for decision." See also the remarks of du Parcq, L.J., in *De Yong* v. *Shenburn* [1946] 1 All E.R. 226. In the last resort *Donoghue* v. *Stevenson* is merely an extreme example of circumstances in which the duty has been held to exist.

Hambrook v. *Stokes* [1925] 1 K.B. 141 is usually quoted on the subject of damages for nervous shock, and Lord Thankerton, in his speech in the later case of *Bourhill* v. *Young* [1943] A.C. 92, certainly treated it as confined to the question of damages, referring to the statements of Bankes and Atkin, L.JJ., concerning the extent of the duty owed by the defendants to the plaintiff as *obiter dicta*. Yet how, we may respectfully ask, can the question of duty be irrelevant in an action of negligence? It is to be observed that Lord Russell of Killowen expresses a preference for the dissenting judgment of Sargent, L.J., in *Hambrook* v. *Stokes*; and that Sargent, L.J., bases his dissent on his unwillingness to extend to the circumstances of that case the duty of owners of vehicles towards others in or near the highway. It is dangerous to adopt too rigid a system of pigeon-holing leading cases.

Bourhill v. *Young*, like *Donoghue* v. *Stevenson*, was a Scottish case concerning a principle which is identical in English law. For our purposes the decision may be summarised as follows: a road user owes no duty of care to another road user who is not so placed that he may reasonably be expected to be injured by the omission to take care which is alleged. The Glasgow fishwife, who was the pursuer in that case, was alighting from a tramcar, which had been overtaken by the motor-cyclist against whose estate the action was brought. She was not directly involved in the subsequent collision between the motor-cyclist and a motor car, and did not see it: her claim was based on the nervous shock which she alleged was caused her by hearing the noise of the collision and seeing blood on the road. The House of Lords were unanimously of the opinion that she could not recover damages, since the motor cyclist had been guilty of no breach of duty to her.

The defendants in the recent case of *Farrugia* v. *Great Western Railway* [1947] 2 All E.R. 565, relied to some extent on *Bourhill* v. *Young*. The driver of the defendants' lorry tried to drive under a railway bridge which was so low that a large container loaded on the lorry was thrown off and injured the boy plaintiff who, having been riding without authority on the lorry and having jumped off, was running behind, apparently with a view to boarding the lorry again. The defendants contended, *inter alia*, that the plaintiff, when he was struck by the container, was engaged in an unlawful user of the highway, and so was a trespasser to whom the defendants owed no duty of care. Lord Greene, M.R., with whose judgment Somervell, L.J., and Singleton, J., agreed, thought that this involved too sweeping a proposition. The facts of every case had to be examined. Even if it were the fact that the plaintiff was doing something in respect of which the owner of the soil of the highway could have maintained an action for trespass, it appeared to his lordship that that was a long way from discharging the defendants from their duty of care towards him.

The defendants also argued that they could owe no duty to the plaintiff because their driver could have no reason to expect that the plaintiff would be where he was. It was in support of this proposition that *Bourhill* v. *Young* was relied on. The Master of the Rolls dealt with this contention by pointing out that the defendants had placed on their vehicle a container which, in certain circumstances, was bound to be a source of danger to persons in the near neighbourhood of the streets into which they sent it. When the driver adopted a course which took him under the low bridge "the peril that was inherent in the situation became effective. It appears to me," said his lordship, "that the defendants and their driver, having created between them a potential source of danger which would impinge on anybody on the highway in the near neighbourhood, must be taken to have owed a duty towards anybody who might be on the highway in the near neighbourhood, whether he was there lawfully or whether he was there unlawfully . . . I should have thought the duty was a duty to take care *vis-à-vis* anyone— . . . the general class of persons who, at the moment when the danger materialised, might happen to be in the near neighbourhood." The fact that the plaintiff was not in the mind of the driver appeared to the Master of the Rolls to be beside the point. Applying words of Lord Thankerton in *Bourhill* v. *Young*, Lord Greene said that the area of potential danger in the present case was the area on which the container would fall when it was struck by a low bridge. The plaintiff in *Bourhill* v. *Young* had been held to be outside the area of any reasonable contemplation of danger. Here the plaintiff was clearly within the area. In the result the judgment of Lynskey, J., in favour of the plaintiff was affirmed.

It should be noted that in a review of the evidence Lord Greene came to the conclusion that the plaintiff was not at the time of the accident a trespasser to the defendants' goods, namely, the lorry and the container. He evidently had been such a trespasser and apparently intended to trespass again. It is, of course, clear that had he been actually trespassing on the lorry he could not have recovered against the defendants, for they owed no duty to trespassers on their vehicles—cf. *Twine* v. *Bean's Express, Ltd.* (1946), 62 T.L.R. 458. J.F.J.

SOLICITORS' COSTS: A NEW BASIS—II

THE cost to the firm in terms of man-hours and overheads having been ascertained, the credit has now to be apportioned between the various members of the firm who worked on the case. This will not affect their entitlement to profits or salary during the current year, but may be used as a basis for adjustments in succeeding years. Mr. Reginald Heber Smith describes this operation as :—

PRORATING

We can now take a final step called " prorating." In the case on which we have assumed an older senior partner and a junior worked, let us assume that a second junior, with a time cost of $5·30 per hour, worked five hours.

The senior partner (who is the responsible attorney) wishes to send out a bill and asks Accounts for a time cost report on the case. Accounts, by looking at the Time Service Ledger for the case, reports that the above three did the work, the time spent by each, and the total cost of the job, which is $100.

After discussion in firm meeting a bill for $200 is approved. When the responsible attorney sends out the bill it is typed in triplicate. The original of the bill goes to the client, a carbon copy on green paper goes to Files, and a carbon copy on red paper goes to Accounts.

Accounts now has all the data needed for " prorating " this bill among the men who did the work. The prorating is purely mathematical. The prorating sheet would look as follows :—

Attorney	Cost per Hour	Hours Worked	Cost	Multiplied by Ratio of Bill to Cost
Senior Partner A ..	$10·00	1·1	$11·00	$22·00
Junior B	6·25	10·0	62·50	125·00
Junior C	5·30	5·0	26·50	53·00
Total Cost			$100·00	
Bill approved at ..			200·00	$200·00
Ratio bill to cost ..			2 : 1	

The figures in the last column are posted to the " prorating book " so that each attorney who has worked on this case gets his " prorating credit." A has a credit of $22·00, B a credit of $125·00 and C a credit of $53·00.

In any given case this method of prorating the bill may be grossly unjust. B may have done so poorly that C had to be called in to supplement him. Ideal justice would give C a larger credit than B. The advantage of the mathematical prorating plan is that it is impersonal. It avoids the *ad hominem* argument. As case after case is prorated the law of averages has its steadying remedial effect. A " prorating " method, whatever its defects, is infinitely superior to memory. At the end of a year no one can possibly remember just who worked on each case and how much time he spent, and what the cost and the bill were. By the prorating method, Accounts tabulates this evidence for every case immediately after the bill is sent out and the prorating credits for each man are kept cumulatively.

The system is thus steadily yielding data about each lawyer from three angles :—

(1) His prorating credit (credit for work done).

(2) His credit for business (the total of the bills sent out in cases where he was the responsible attorney).

(3) His credit for profit on business (this is the excess of bill over cost).

FINANCIAL RECORDS

The firm's key financial records (like those of any business) will be two : operating statement showing all receipts and disbursements and balance sheet showing all assets and liabilities. These statements should be prepared at the end of every month. A bookkeeping machine is generally an economy because it produces the figures with maximum promptness and automatic accuracy. Printed forms for these reports can be made up so that all Accounts has to do is type in the figures at their appropriate places.

These accounts can be kept on a cash or accrual basis. Cash is simpler, accrual far more accurate. In any firm with a number of partners whose shares of profits may be changed somewhat from year to year, the accrual method is the only honest one. Assume that an important case is finished in the last month of the firm's year. The firm's bill goes out promptly. On the cash basis the fee will or will not be a part of that year's business, depending on whether the client happens to pay the bill before or after the year-end. On the accrual basis the firm is master in its own house, it determines when a case is finished and may be properly billed, and when billed the fee is part of the revenue of that year.

The accrual system for use in a law firm is simpler than it may sound. It is desirable that a law firm should keep its liabilities at a minimum by paying its bills on the nail. Hence it will have few accounts payable. If the firm is holding moneys due clients, those are accounts payable, but if the amounts are substantial or are likely to be held for some time, they should be segregated and deposited in a separate bank account. The other items on the liability side may be reserves for taxes, undivided profit (or loss) and capital which the partners have paid into the firm.

The chief item on the asset side will be accounts receivable. These are bills sent out and not yet paid. Since the accrual system treats these bills as firm assets, some system of reserves is necessary. The following system has been tested and has worked out in practice. A bill is an asset at full face value for three months ; it is a " current " account. If not paid within three months, it becomes an " overdue " account and a 20 per cent. reserve is automatically set up. At the end of eight months, if still unpaid, the bill becomes a " suspense " account and a reserve of 60 per cent. is automatically set up. Suspense bills are periodically reviewed by management and by the partners. They are definitely red lights. They may signify that the client is dissatisfied with the work or with the bill. The firm looks to the responsible attorney to find out and straighten it out if he can.

When it appears that a bill is not going to be paid it is transferred to " bad " accounts and disappears from the firm's assets. Since the records about the work of the attorneys that we considered [above] were made up when the bill was sent out and in the faith that it was good, what happens when a bill goes " bad " ? The answer is that the record entries are reversed.

In the case we used [above] as an illustration, partner A had a business credit of $200, because that was the amount of the bill. That is cancelled. He had a profit credit of $100 because the time cost of the job was $100. His profit credit is cancelled and, further, he takes a loss. The cost of the job still is $100, the client has paid zero, there is a loss to the firm of $100 and that must be borne by the responsible attorney in his individual record.

What happens to the prorating credits ? They are cancelled. The responsible attorney loses his credit entirely. The hours worked on that case are deducted from his total of hours worked for clients. Work done for a client who does not pay is not productive work. From the firm's point of view it had better never have been done. It is effort gone to waste.

The situation of the two juniors who worked on the case is different. Neither of them was the responsible attorney. They had nothing to say about accepting the case. They worked on it because the partner told them to. Their prorated credit is gone because that was based upon the bill and the bill has become " bad," but justice requires that they be protected at least to a fair extent. They are protected to the extent of their time cost. Junior B had devoted to the case time worth at cost $62·50. That amount of credit is retained on his record. The account of the responsible attorney is debited $62·50. Junior C receives the same protection.

If all this seems pretty rough on the poor responsible attorney, bear in mind that the firm is taking into account (and in part will pay him for) the business he has brought in and the profit resulting from it. Accordingly he must take the bitter with the sweet and stand his losses as well as enjoy his gains.

(*To be concluded*)

Criminal Law and Practice

TAKING WITNESSES' STATEMENTS

THE courts in this country are rarely bothered with questions arising where both sides in civil disputes or criminal proceedings wish to take statements from the same witnesses. Advocates nearly always take the prudent course of never approaching a witness who is on subpœna by the other side, and certainly never attempt, at least not in the present writer's experience, to approach witnesses for the prosecution if they are on subpœna. If they are not on subpœna or bound over to attend, what is the practice?

It is interesting to read a query which reached us by air mail last week from a South African reader, who deals with this point. He wrote :—

> " On two occasions recently the police, who act as public prosecutors in this territory, have objected to the solicitor for the defence interviewing witnesses whom the police intend to call at the trial of the action. Over a long experience of some fourteen years in England the writer has never met this suggestion before, and, indeed, recollects that the practice of the solicitors in England is entirely to the contrary, and recollects numerous occasions when witnesses called by the prosecution have been confronted by statements which they have given to a representative of the defendants. If the contention of the prosecution were correct it would mean that the police could draw up a list of the witnesses whom they intended to call at the hearing and thus by supplying this list to the defendant prohibit him or his advisers from obtaining any information about the matter other than that of which he himself was cognisant. This is in fact what has happened in a recent case, and the only authority which the writer can find on the subject is *Bishop of Lincoln's Case* (1637), 3 State Tr. 769. It is most difficult to get any authority on such matters in this territory : the resident magistrates themselves are inclined to sympathise with the defendant, and in one case we have obtained an adjournment in order to interview these witnesses, but they are by no means happy about the authority."

In this matter the law, as may be expected, is on the side of reason and common sense and does not put meaningless barriers in the way of the preparation of the defence of persons charged with offences. To endow the police with powers to arrogate to themselves the right to exclude witnesses from being interviewed by the defence would indeed be a dangerous and objectionable extension of the powers of administrative government. The ancient authority of the *Bishop of Lincoln's Case*, cited above by our correspondent, merely shows that even in less democratic days, before the Bill of Rights, a solicitor was permitted to discourse with a witness " and ask him what he can say to this or that point and so he may know whether he be fit to be used in the cause or no " but not to " labour " or instruct or threaten a witness.

This case, and the cases which follow in vol. 15 of the " English and Empire Digest," p. 695, merely illustrate the fact that it is a common law offence to tamper with witnesses in courts of justice. A solicitor who takes a statement from a witness whom it is clear that the police are going to call does so at the risk—small though that risk may generally be—that he will be at least suspected of attempting to dissuade a witness from giving evidence of a certain character (*R.* v. *Greenberg* (1919), 63 SOL. J. 553 ; 26 Cox C.C. 466). The risk is indeed small in this country, as there is a certain amount of mutual respect and a spirit of compromise between the police and the legal profession.

"Stone's Justices' Manual" (78th ed., p. 637) notes that this law has seldom been brought into operation, but a solicitor was found guilty at the Central Criminal Court on 25th September, 1875, of dissuading a person, who had been bound over to prosecute and give evidence on a charge of felony, from so prosecuting and giving evidence, and was sentenced to imprisonment (*R.* v. *Tally*, 82 C.C.C. Sess. Papers 518 ; *The Times*, 27th September, 1875).

In territories where the English common law prevails, if the police attitude is obstructionist as regards the legitimate preparation of the defence, they must be shown that the interests of justice are paramount, and if the local law societies take a firm stand and clearly prove that the police are adopting an attitude which prevents the defence from duly preparing their case, there can be little doubt which side public opinion, as expressed in Parliament and the Press, as well as in the general attitude of the courts, will take. A healthy firmness will induce the police, who are, after all, our servants, to collaborate to obtain justice and not to obstruct it.

PUBLIC ORDER

In a debate in the House of Commons on 23rd November on the recent disturbances at political meetings in North London, reference was made to the case of *Duncan* v. *Jones* [1936] 1 K.B. 218, as an example of what can be done to quell trouble.

The appellant and thirty others had collected to hold a street meeting. Written across the roadway at the entrance to the street where the meeting was to be held were the names of the speakers and the words : " Defend the right of free speech and public meeting." A police inspector asked them to move their meeting to a place some 175 yards distant. The appellant refused and was subsequently fined 40s. for obstructing the officer in the execution of his duty (Prevention of Crimes Act, 1871, s. 12, as amended by the Prevention of Crimes Amendment Act, 1885, s. 2).

On appeal to quarter sessions, it was proved that over a year previously the appellant had addressed a meeting on the same spot, and a disturbance had followed. Later the appellant had made several attempts to hold meetings on the same spot, but had been frustrated by the police. The appeal was dismissed.

On a case stated to the Divisional Court, Lord Hewart, C.J., held that quarter sessions was entitled to come to the conclusion that the police officer was right in considering that a disturbance might result from the meeting and that he was therefore obstructed in the execution of his duty. He denied that his decision involved holding that an assembly could be held to be unlawful " merely because the holding of it is expected to give rise to a breach of the peace on the part of persons opposed to those who are holding the meeting." He referred to the unsatisfactory case of *Beatty* v. *Gillbanks* (1882), 9 Q.B.D. 308, in which, although the holders of a meeting knew that disturbances would be caused by holding the meeting, they were not bound over, because the evidence showed that the disturbances were entirely due to persons antagonistic to the holders of the meeting, but held that that case was " apart from the present case."

Duncan v. *Jones* did not arise under the Public Order Act, 1936, as stated by Mr. Hynd in the debate. In fact it was decided on 16th October, 1935, but it drew attention to the fact that *Beatty* v. *Gillbanks*, *supra*, was unsatisfactory in that it seemed to be a charter for every user of provocative and insulting language at a meeting, so long as he did not indulge in violence, but merely provoked it. As a result, s. 5 of the Public Order Act, 1936, provided that it should be an offence " in any public place or at any public meeting " to use " threatening, abusive or insulting words or behaviour with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be occasioned." Without doubt the locality chosen by the speaker may be strong evidence of intent, and if a particular locality is chosen because it is known that a large number of the residents are likely to be provoked to angry action by the speeches, that should be an aggravating feature of a grave offence, which is punishable under the Act with a maximum fine of £50, or a maximum term of imprisonment of three months, or both imprisonment and fine. The gravity of the offence is stressed by the fact

that a constable may without warrant arrest any person reasonably suspected by him to be committing an offence under s. 5 (s. 7).

In view of the apprehensions of sections of the population as to a continuance of this type of disturbance, it is surprising that more use has not been made of the power of magistrates, so clearly laid down in *Lansbury* v. *Riley* [1914] 3 K.B. 229, to order a person to find sureties or enter into recognizances for good behaviour where satisfied that he has been guilty of inciting others to commit a breach of the peace or to persevere in such incitement. There are powers also, possessed by the police, which enable them to attend indoor meetings where there are reasonable grounds for apprehending that an offence is imminent or likely to be committed (*Thomas* v. *Sawkins* [1935] 2 K.B. 249). This would apply equally to an offence under s. 5 of the Public Order Act, 1936. S. M.

A Conveyancer's Diary

SOME WAR-TIME CONTRACTS

THE expiration of emergency legislation is an occasion for rejoicing, but a case recently came to my notice where this generally happy circumstance brought a special set of difficulties in its train. I believe that facts similar to those which arose in this instance may not be uncommon, and for this reason I propose to enlarge on a topic which, at first glance, may seem rather highly specialised.

On some date before the termination of hostilities V agreed to sell some land to P. It was agreed between the parties that the date of completion should be deferred until the end of the war, and the difficulty thereupon evidently presented itself of fixing a suitable date which would not only accord with the wishes of the parties, but which would also be sufficiently certain to obviate any risk of the contract being set aside at some future time by reason of the vagueness of one of its essential terms. The formula eventually agreed upon was as follows: "The date for completion shall be the date on which the present emergency shall, in accordance with s. 11 (2) of the Emergency Powers (Defence) Act, 1939, be declared to have come to an end." Section 11 of that Act provided as follows:—

"(1) Subject to the provisions of this section, this Act shall continue in force for the period of one year beginning with [the 24th August, 1939], and shall then expire:

Provided that, if at any time while this Act is in force, an address is presented to His Majesty by each House of Parliament praying that this Act should be continued in force for a further period of one year from the time at which it would otherwise expire, His Majesty may, by Order in Council, direct that this Act shall continue in force for that further period.

(2) Notwithstanding anything in the preceding subsection, if His Majesty by Order in Council declares that the emergency that was the occasion of the passing of this Act has come to an end, this Act shall expire at the end of the day on which the Order is expressed to come into operation."

The Act of 1939 was, in fact, continued in operation by a series of Orders in Council until 1945, when the Emergency Powers (Defence) Act, 1945, repealed subs. (1) of s. 11 and replaced it with another subsection under which the Act of 1939 was to expire on the 23rd February, 1946. The new subsection contained a proviso similar to that in s. 11 (1) of the 1939 Act, but no attempt was made to continue the Act in operation, with the result that the Act of 1939 has now expired, and no machinery exists whereby it can be in any way revived. With the expiration of the Act by effluxion of time the necessity for an Order in Council such as that envisaged in s. 11 (2) of the Act has now ceased, and whatever official form the announcement of the termination of the war may take, it cannot now be that of an Order made under, or by reference to, s. 11 (2). V and P are therefore left with a contract for the sale of land which contains a date for completion determinable by reference to an event which can never occur. The Attorney-General recently stated, in answer to a question in Parliament, that it was not the Government's intention to introduce legislation for the purpose of filling the *lacuna* which now exists in these cases (*see* 91 SOL. J. 385). The construction of a term in a contract made by reference to s. 11 (2) of the Act must therefore proceed, unless the parties themselves can agree to the contrary, according to the canons of interpretation ordinarily applicable, without entertaining any hopes of special legislation of the kind, for example, which was found necessary in the analogous problem of leases made for the duration of the war as the result of *Lace* v. *Chantler* [1944] K.B. 368.

To return to the facts of the case, if V, when called upon by P to do so, refuses to convey (as will often happen where the value of the subject matter of the contract has increased in the intervening years), can P enforce the contract specifically? In my view the answer is in the negative, on the ground that the contract is void for uncertainty. The date for completion having been fixed, however defectively, it is not open to P to say that in this respect (whatever may be the position as regards other terms of the contract) the contract should be treated as an open contract. If the contract is not enforceable specifically against V, P never acquired any interest in the land under the doctrine of *Walsh* v. *Lonsdale* (1882), 21 Ch. D. 9, and if he has in the meantime attempted to assign the benefit of the contract to a third person, the assignment is just as much a nullity as the contract itself. If the contract has been registered by P as an estate contract, V is, in my opinion, entitled to apply to the court for the registration of the contract to be vacated, under s. 10 (8) of the Land Charges Act, 1925.

The term regarding the date for completion in this particular instance may possibly have been in a form which has not been widely used, and it is conceivable that other forms of words have been used with the same end in view, but which do not suffer from the defect which, as I see the matter, proves fatal if the Emergency Powers (Defence) Act, 1939, has been incorporated referentially in an instrument. There are provisions for repealing certain other emergency measures by Order in Council in terms substantially similar to those employed in s. 11 of that Act, e.g., Courts (Emergency Powers) Act, 1943, s. 14; Administration of Justice (Emergency Provisions) Act, 1939, s. 11, and it may be that the day on which one of these Acts will expire has been selected by parties as a means of determining a future date for some contractual purpose. Another possibility is that some general expression, such as "end of the emergency," has been used. Had that been the position in the case of which I have treated, the contract would not have been void for uncertainty, but I think the effect would have been much the same, although it would have rested on a different ground. Whatever the effect of the contractual obligations of the parties may be (and that is not an easy question to answer in the total absence of direct authority on the point), an agreement for the sale of land, if enforceable by an action for specific performance, confers on one of the contracting parties an equitable interest in land—see, for example, *L. & S.W. Rly. Co.* v. *Gomm* (1882), 20 Ch. D. 562, *per* Jessel, M.R., at p. 582. The conferment of an interest in land is subject to the rule against perpetuities, and in my opinion the postponement of the date for completion of a contract for the sale of land to a time which will not necessarily arise within the period allowed by the rule is an infringement of the rule and renders the contract unenforceable by the equitable remedy for specific performance. This, however, does not end the matter. If the contract in such a case is in other respects a valid contract, i.e., if it cannot be upset on the ground of uncertainty in regard to the term fixing the date for completion, the aggrieved party would still, as it appears, be able to enforce the contract by action for

damages, notwithstanding the defect in regard to the perpetuity rule, on the authority of *Worthing Corporation* v. *Heather* [1906] 2 Ch. 532, a decision which I discussed recently in connection with the law of options. It is remarkable that the point has not yet come up for a decision in the courts.

* * * *

To return to the law relating to options once again, a correspondent has written to say that he is at a loss to understand why the decision of Jenkins, J., in *Hutton* v. *Watling* (1947), 91 SOL. J. 613, was not referred to in my recent notes on the subject. My answer is that the purpose of those notes was to outline the principles of the law and to bring together the main authorities from which those principles may be deduced. Viewed from that aspect, the decision in *Hutton* v. *Watling*, as I read it, takes us no further. The learned judge followed the decision of the Court of Appeal in *S.E. Rly. Co.* v. *Associated Portland Cement Manufacturers, Ltd.* [1910] 1 Ch. 12, and merely applied that decision (as he acknowledged himself bound to do) to the facts of the case before him. As I stated what I conclude to be the principle of that decision in my notes (91 SOL. J. 675), I think I did all I set out to do; any attempt at greater detail would have involved treatment at a length for which space cannot be found. But since I have reverted to the subject, I am happy to note that Jenkins, J., in his judgment has dispelled doubts entertained by certain very learned text-book writers as to the correctness of the decision in the *Portland* case in a manner and for reasons which seem eminently consonant with common sense; and a perusal of the decision also brings out something that I had forgotten, that the disapproval of the decision in *Rider* v. *Ford* [1923] 1 Ch. 541 which I expressed is shared by Jenkins, J., and now has, therefore, the support of judicial authority. I am therefore grateful to my correspondent for affording me the opportunity of underlining my faith in the *Portland* decision and my disapproval (now strongly fortified) of that in *Rider* v. *Ford*.

"ABC."

Landlord and Tenant Notebook

CONTROL OF REBUILT PREMISES

THE resolving of a conflict between county court decisions on a point concerning the meaning of "by purchasing the dwelling-house" in para. (*h*) of Sched. I to the Rent, etc., Restrictions Act, 1933, by the Court of Appeal in *Powell* v. *Cleland* (1947), 91 SOL. J. 625 (*see* 91 SOL. J. 662), has quickly been followed by the disposal of another conflict by the same court in *Ellis & Sons Amalgamated Properties, Ltd.* v. *Sisman* (1947), 91 SOL. J. 692. This time the issue was whether the tenancy of a partially erected dwelling-house, replacing one which had been destroyed by enemy action (no notice of disclaimer having been given), was, as had been the tenancy of the destroyed house, one to which the Increase of Rent, etc., Restrictions Acts, 1920 to 1939, applied.

The conflict of opinion was referred to in this Notebook on 18th May, 1946 (90 SOL. J. 232), and while the recent decision settles (subject to what the House of Lords may say) the difficulty most frequently encountered (proceeding, incidentally, on the lines favoured by the Notebook), some care must be taken when applying it. For its scope is less wide than at first appears, and what is in fact *obiter dictum* might easily be mistaken for part of the *ratio decidendi*; disentanglement is, as our Current Topics pointed out on 27th December last (91 SOL. J. 683), often a difficult task.

The short facts were that the defendant had been the weekly tenant of a dwelling-house which was rendered unfit for habitation by an "incident," as it used to be called, which occurred on 8th March, 1941. The local authority demolished what was left, leaving only the foundations. (This had been much in issue in the court below. The learned judge there found that the foundations had not been removed, but held that this was immaterial.) The tenant's family—the tenant himself was serving in the forces—went and lived elsewhere, and no communication of any description passed between the parties till September, 1946, when rebuilding with new materials (by the local authority) had commenced. The tenant then wrote to the plaintiffs, his landlords, asking for a tenancy; soon after that he took the point that he was still tenant; in June, 1947, they gave him notice to quit (he had commenced an action for a declaration in the meantime, but the course of that action need not be examined). At that time the rebuilding was still in progress, and it was agreed that he then had the intention to return. When the action was heard the house was "not quite completed so as to be fit for habitation." It had not been assessed for rating purposes. The points argued were whether the contractual tenancy had been determined by the events that had happened before the notice to quit; if not, whether the notice to quit and subsequent events had brought into being a statutory tenancy.

The action was tried in the Mayor's and City of London Court, where the learned judge held that the contractual tenancy had existed until the notice to quit had terminated it, and that the substantial question was whether the defendant had "retained possession" within the meaning of s. 15 of the 1920 Act, which creates the status commonly described as that of "statutory tenant." He considered that, in effect, the landlord had repaired the house, the authorities showing that repair included rebuilding if necessary; and also that there had been no "alteration into something substantially different" so as to make *Phillips* v. *Barnett* [1922] 1 K.B. 222 (C.A.) (conversion into factory) applicable.

The Court of Appeal disagreed with the latter part of this reasoning. The judgment delivered by Tucker, L.J., might be said to proceed on these lines: there are, as it were, different kinds of differences: there are differences in nature and quality, and differences in degree and amount. Granted that the difference between what existed on the land when the notice to quit expired and what had existed there when the bomb fell would be a difference in amount and unlike the difference dealt with in *Phillips* v. *Barnett*; there was, nevertheless, no dwelling-house when the notice expired. The Acts do not apply to the site of a dwelling-house or to a site plus an incomplete dwelling-house; it is only a tenant of a house let as a separate dwelling who is entitled to possession.

The question, accordingly, remains essentially one of fact; but where the court below went wrong was in holding that the extent of repair did not matter, and, as the learned judge there had put it, that it would make no difference if for a time there was no part of the house or the foundations on the site.

The important feature of the new authority is that it does not warrant the proposition that a tenant would not be entitled to return as statutory tenant of a completely rebuilt house. In one county court case (unreported) a tenant was held to be so entitled, and, incidentally, found himself enjoying far better premises at the same rent as that paid for the old house, which had been in poor condition when destroyed. The question whether a new dwelling-house of a different sub-species, erected on the site, would, if the tenancy had not come to an end before the completion of the new building, be protected, is not actually covered by the judgment; I would submit that if the landlord did cause a new dwelling-house of a different type to occupy the site in such circumstances, he would be guilty of a breach of his obligations towards the tenant, his conduct constituting a breach of covenant for quiet enjoyment if not a derogation from his grant. Still less does the decision provide us with authority on the status of a new house built on a site without any war-damage past. Two possible questions which may arise in such a case are whether the new house is subject to the Increase of Rent, etc., Acts at all; and, if so, whether its standard rent is determined by what was the standard rent of some house which formerly occupied the site. There has been no authority on even the first of these points: the

arguments against the proposition that a new house (apart from cases in which the provisions of the Building Materials and Housing Act, 1945, may apply) is subject to control are fairly formidable; the 1939 Act, it may be contended, continued existing control (s. 1), discontinued de-control (s. 2), and extended control to other dwelling-houses (s. 3), but did so by reference to their rateable value on specified past dates; it did not concern itself with houses not in existence on 1st September, 1939. It is true that the interpretation section, s. 7, contains a provision (subs. (3)) that in relation to any dwelling-house first assessed after the appropriate day any reference to the rateable value on the appropriate day shall be construed as a reference to the rateable value on the day on which the dwelling-house is first assessed, but an argument that this brings into control houses which had no existence at all in 1939 may be answered by the observation that far clearer language would have been used if that had been intended. If that answer should not prevail, I suggest that the matter of the standard rent, i.e., whether it should be the same as that of a house formerly part of the hereditament, or that of the rent now agreed, would depend once more on the question of identity, so that this time the consideration whether the building could be said to be the old one repaired would be relevant to the issue. R. B.

TO-DAY AND YESTERDAY

LOOKING BACK

In January, 1912, Henry Dickens, the son of Charles Dickens, was invited by Lord Chancellor Loreburn to go the Midland Circuit as Commissioner of Assize in place of Mr. Justice Lawrance, who was indisposed. He accepted but afterwards remembered that he had promised to give a public recital of *A Christmas Carol* at Nottingham on the Circuit and so wrote to the Chancellor asking whether, in the circumstances, there was any objection to his doing so. The answer, dated 8th January, 1912, was as follows: "My dear Dickens, I quite agree with you that there can be no possible objection to your reading or reciting any work of your father's when on assize, unless it be some of the fun he poked at us judges and the law with which you are so familiar! By all means recite the *Xmas Carol*, so far as my advice goes, and I should be very glad if I were able to be there and hear it. Yours sincerely, Loreburn." In another letter, dated 12th January, 1912, Mr. Justice Coleridge wrote to him: "I am truly glad to see the announcement that you are to go as Commissioner of Assize. I hope and believe that, as in my case, it means that you will ultimately be appointed a Judge of the High Court, an appointment, in my opinion, long overdue." But in that, disappointment was in store. Loreburn was suddenly taken ill and had to retire, and his successor, Lord Haldane, appointed Mr. Bailhache to fill the next judicial vacancy. Finally, Dickens had to be content with the office of Common Serjeant of the City of London.

LIQUID REFRESHMENT

Several newspapers joyfully published a photograph of Sir Stafford Cripps refusing champagne with an expressive gesture at the lunch preceding the opening of Bertram Mills's Circus, at Olympia. Even without visual evidence none would suspect the Chancellor of the Exchequer of intemperance and yet, despite the proverbial sobriety of judges, a legal background is far from incompatible with an appreciation of the pleasures of the glass. There is a story of Mr. Justice Manisty who was accustomed to take some few glasses of old port after dinner. Once, feeling unwell and rather weak, he consulted his medical adviser, who prescribed a change to claret. Somewhat unwillingly he followed this advice for three weeks but, finding himself weaker than ever, went back and said that if he went on with "that French stuff," he would not be able to get to court at all. The doctor yielded and gave him leave to return to his usual allowance of port, but Manisty replied: "That is all very well, but how about the arrears?" Mr. Justice Day, famous for the severity of his sentences, was also a lover of good wine. Once, while he was on circuit with Mr. Justice Mathew, a high sheriff sent him several bottles of port from his cellar. Later on he asked Mathew whether his brother judge had liked the wines. "As was to be expected," was the reply, "he tried them all patiently and punished them severely."

DRINKING WAYS

The extent of the former convivial habits of Bench and Bar are well illustrated by a circuit story of an occasion when a hospitable peer entertained Lord Chief Justice Jervis and the members of the Bar to a dinner at which the usual bonds of restraint were somewhat loosened. One of the leaders of the circuit was Honeyman, afterwards himself a judge, and next morning a brother silk asked him if he remembered what he had done the previous night. Honeyman did not remember and was sorry to learn that he had called the Chief Justice a damned fool. He immediately wrote a note in the following terms: "Dear Chief Justice, I have just heard with great concern that last night after dinner I spoke to your lordship in a way which I never intended and I am sure you will overlook." This was passed up to the Bench and Jervis immediately wrote this reply: "My dear Honeyman, Your letter has removed a great weight from my mind. Until I got it, I held the idea that I had applied the term to you and was considering how to ask *your* indulgence." On the subject of drinking I always liked the observations once made by Mr. Justice Swift at the Gloucester Assizes: "Alcohol cheers people, loosens their tongues, makes conversation and spreads geniality. There is nothing wrong in it if it is taken in moderation. The taste is pleasant, so I am told, and it warms one: otherwise who would pay for a cocktail if it were no more pleasant than water or milk?"

COUNTY COURT LETTER

Trespass by Fowls

In *Turner* v. *Grimmett*, at Birmingham County Court, the claim was for £15 in respect of damage to a smallholding. The plaintiff's case was that eleven chickens, three cockerels and a bantam hen had broken through from the defendant's fowl run in December, 1946. They had destroyed 350 winter cabbages, worth 1½d. a lb., and 150 spring cabbages, also 275 brussels sprouts worth 1s. a lb. The defendant's case was that a wire fence round his fowl run had been damaged by a dog, thus enabling the chickens to escape. The damage was admitted, but the amount was exaggerated, e.g., the wholesale price of sprouts was 6d. a lb. The plaintiff had refused an offer of £5 in settlement. His Honour Judge Forbes gave judgment for the plaintiff for £5 without costs.

Greater Hardship

In *Davies* v. *Lawrence*, at Monmouth County Court, the claim was for possession of a cottage. The plaintiff's case was that the defendant was a handyman-blacksmith, and had been employed by the plaintiff until the 14th April. On that day the defendant's own notice to terminate his employment had expired. He had occupied the cottage as a servant, and had not paid any rent. His successor could not start work until the cottage was available. Another cottage on the estate had recently been sold, but that was before the defendant gave notice. The defendant's case was that he did not live in the cottage as an essential condition of his employment. His Honour Judge Thomas made an order for possession in two months.

In *Lawrence* v. *Keir*, at the same court, the above defendant and his sister claimed possession of a house as beneficiaries under a will. Being dispossessed of his cottage, the plaintiff required accommodation for himself, his wife and son aged sixteen years. The defendant's case was that, being employed by the Ministry of Works in rebuilding old castles, he would lose his employment if he had to leave the district. He had a wife and two children. No order was made.

In *Davies* v. *Jeffrey*, at the same court, the claim was for possession of a house let to the defendant in 1934. The plaintiff was aged sixty-four, and had been tenant of a hotel for twenty-seven years. On medical advice he was about to retire. His wife had had two major operations in eight years. The defendant was a bank clerk and his case was that there was no alternative accommodation. The plaintiff owned three other houses in the town. His Honour Judge Thomas observed that it would be easier for the plaintiff and his wife to obtain other accommodation. The defendant had been separated from his family, while in the Forces, and judgment was given in his favour, with costs.

NEW YEAR LEGAL HONOURS

PRIVY COUNCILLORS

The Hon. WILLIAM JOHN MCKELL, K.C., Governor-General of Australia.

The Hon. Sir MALCOLM MARTIN MACNAGHTEN, lately Judge of the High Court of Justice. Called by Lincoln's Inn, 1894, and took silk 1919.

The Hon. Sir HUMPHREY FRANCIS O'LEARY, Chief Justice of New Zealand.

KNIGHTS BACHELOR

Mr. RICHARD HAROLD ARMSTRONG, Chairman, Royal Liverpool United Hospital. Admitted 1896.

Mr. LESLIE CECIL BLACKMORE BOWKER, City Remembrancer. Called by the Middle Temple, 1922.

His Honour TOM EASTHAM, K.C., Senior Official Referee. Called by Lincoln's Inn, 1904, and took silk 1922.

Mr. Justice ARTHUR COMYN HAPPELL, Puisne Judge, High Court of Judicature, Fort St. George, Madras. Called by the Inner Temple, 1934.

Mr. Justice LIONEL CLIFFORD HORWILL, Puisne Judge, High Court of Judicature, Fort St. George, Madras. Called by the Inner Temple, 1932.

Mr. WILLIAM IVOR JENNINGS, Vice-Chancellor, University of Ceylon. Called by Gray's Inn, 1928.

Mr. Justice RONALD FRANCIS LODGE, Puisne Judge, High Court of Judicature, Fort William, Bengal.

The Hon. CHARLES JOHN LOWE, Judge of the Supreme Court, Victoria, and Chancellor of the University of Melbourne.

Mr. Justice HERBERT RIBTON MEREDITH, Puisne Judge, High Court of Judicature, Patna.

Mr. JOHN HARRY BARCLAY NIHILL, Chief Justice, Kenya. Called by the Inner Temple, 1921.

The Hon. DAVID STANLEY SMITH, Supreme Court Judge and Chancellor of the University of New Zealand.

ORDER OF THE BATH

G.C.B.

Sir THOMAS JAMES BARNES, Procurator-General and Treasury Solicitor. Admitted 1911.

ORDER OF ST. MICHAEL AND ST. GEORGE

C.M.G.

Mr. S. W. P. FOSTER-SUTTON, Attorney-General, Kenya.

ORDER OF THE INDIAN EMPIRE

G.C.I.E.

Sir MAURICE LINFORD GWYER, Vice-Chancellor, Delhi University. Called by the Inner Temple, 1903, and took silk 1930.

K.C.I.E.

Mr. JOHN ROWLATT, Office of the Parliamentary Counsel, London. Called by the Inner Temple, 1922.

ROYAL VICTORIAN ORDER

K.C.V.O.

Mr. ROLAND CLIVE WALLACE BURN, C.V.O., Solicitor to the Duchy of Cornwall. Admitted 1908.

ORDER OF THE BRITISH EMPIRE

G.B.E.

Sir CYRIL JOHN RADCLIFFE, K.C., for services to the British Commonwealth. Called by the Inner Temple, 1924, and took silk 1935.

K.B.E.

Sir JOHN FORSTER, K.C., President of the Industrial Court. Called by Gray's Inn, 1919, and took silk 1946.

Sir WILLIAM PATRICK SPENS, K.C., Chief Justice of India. Called by the Inner Temple, 1910, and took silk 1925.

C.B.E.

Lieutenant-Colonel A. E. EVANS, Medical Chancery Visitor, Supreme Court of Judicature.

Mr. MEHMED HALID, Puisne Judge, Cyprus.

Mr. G. R. PALING, Assistant Director of Public Prosecutions. Admitted 1918.

Mr. C. F. L. ST. GEORGE, Clerk of the Journals, House of Lords.

Mr. A. R. A. WESTON, Assistant Solicitor, Ministry of Agriculture and Fisheries. Admitted 1919.

O.B.E.

Mr. T. E. BROWN, Hon. Legal Adviser to the Incorporated Soldiers', Sailors' and Airmen's Help Society and Lord Roberts Memorial Workshops. Admitted 1903.

Mr. H. DARLOW, Town Clerk, Bedford. Admitted 1910.

Mr. A. HAMILTON, Sheriff-Clerk of Fife since 1936.

Mr. P. T. LOOSEMOORE, Clerk to the Plympton St. Mary Rural District Council.

Mr. D. MCCARTAN, Clerk of the Crown and Peace, and Registration Officer, County Down, N. Ireland.

Mr. J. S. MANYO-PLANGE, Crown Counsel, Gold Coast.

Mr. E. A. PHILLIPS, District Probate Registrar, Llandaff and Carmarthen.

Mr. R. W. QUAYLE, Senior Legal Assistant, Board of Inland Revenue. Called by the Inner Temple, 1925.

Major G. C. SCRIMGEOUR, Clerk of the Peace and Clerk of the Council, Cheshire County Council. Admitted 1912.

Mr. J. THOMPSON, Town Clerk, Londonderry.

M.B.E.

Mr. A. L. RALPHES, Town Clerk, Borough of Conway.

Mr. R. B. WEBB, Chief Clerk, Town Clerk's Department, Westminster City Council.

Mr. G. E. WILLIAMSON, Chief Managing Clerk, Solicitor's Department, New Scotland Yard.

POINTS IN PRACTICE

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Guardianship of Infant

Q. H was the owner of a house in which he and his wife, W, resided until September, 1946, when H deserted W and left the house. In November, 1946, W obtained the maximum maintenance order of £2 per week for herself and 10s. for the child on the grounds of H's desertion and failure to maintain her and the child, and W was given custody of the child. H has now sold the house subject to W's tenancy (which is not controlled), and it is assumed that W is a mere licensee and the purchaser is offering her the tenancy of the house at a high rent. It will be appreciated that when the order was made the wife was not paying any rent for the house. Would it be possible for W to apply to the court to have the order for the child increased by proceeding under the Guardianship of Infants Act, 1925, in addition to the previous order, or can W apply to have the previous order discharged and then proceed under the Guardianship of Infants Act? Does *res judicata* apply?

A. The sale of the house is a fresh fact, which prevents the matter from being *res judicata*. W should apply for an additional order under the 1925 Act, without discharging the existing order.

Sale after Voluntary Conveyance—POSITION AS TO ESTATE DUTY

Q. In December, 1946, I acted for three donors, A, B and C and for the donee L, in a voluntary conveyance of land which the district valuer agreed to be worth £1,000. The stamp duty was adjudicated and paid accordingly. L has now sold the property by public auction for £1,900, and I am acting for L as vendor and for the purchaser W. L is the mother of A, B and C. Of the latter, B and C are naturalised subjects of the U.S.A. A and L, who are at present British subjects, will shortly be emigrating to the U.S.A., and they propose in time to become American subjects also. None of the parties has any intention of returning to this country. In view of these facts what do you recommend the purchaser W to demand in the way of an indemnity against the latent liability for estate duty on the property in case A, B and C or any of them die before the expiration of five years from December, 1946? Will the liability for the whole or for only one-third of the estate duty arise on the death of A or B or C (whichever occurs first) and will it be on £1,000 or £1,900? The ages of A, B and C are about twenty-seven, twenty-five and twenty-three respectively.

A. We think that on the death of the first to die of A, B and C (the death taking place within five years of the voluntary conveyance) estate duty will only be payable upon the then (F.A., 1894, s. 7 (5); *Strathcona* v. *Commissioners of I.R.* [1929] S.C. 800) value of one-third of the property. We assume that A, B and C were equitably entitled in equal undivided thirds. The Commissioners will not normally commute estate duty payable upon such a contingency, and a sufficient sum should be set aside on completion to meet the liabilities, or an insurance effected to meet the liabilities. Owing to aggregation and the possible increase in value it is difficult to assess the requisite amount. It is possible that the Commissioners will be in this case prepared to agree the amount to be set aside or covered by insurance. As all parties liable will be out of the jurisdiction we cannot recommend a mere agreement to pay as in "Prideaux," vol. 1, p. 799, Precedent VI (23rd ed.).

REVIEWS

Outlines of Industrial Law. By W. MANSFIELD COOPER, LL.M., of Gray's Inn, Barrister-at-Law. 1947. London: Butterworth and Co. (Publishers), Ltd. 21s. net.

The word "Outlines" in the title of this book is an understatement. In its 344 pages of close but clear print the work contains a wealth of learning set out in an attractive and lucid style. The learned author is the Registrar of and Senior Lecturer in the Faculty of Law at the University of Manchester. In his preface he acknowledges the help of five colleagues at the University, two members of the publishers' staff, and his wife. This team-work has resulted in a work of excellent quality. Although primarily intended for students and teachers of law the book will be invaluable to the practitioner. The rapidity of development in this branch of the law is shown by the fact that (having apparently been finished in March, 1947) the book contains no reference to the existing Control of Engagement Order. At the time the manuscript was finished such a thing as direction of labour was hoped to be a thing of the past. At the present time there is a Bill before Parliament providing for the repeal of the Employers' Liability Act, 1880, and the abolition of the doctrine of common employment. A long chapter in the history of industrial law will thus be closed and extensive revision will be required in textbooks on the subject. A supplement to the present work is therefore to be expected or (more probably) a second edition will be called for. The table of statutes occupies 22 pages and the table of cases a further 37 pages. A feature of the table of cases is that it includes selected decisions of the Umpire under the Reinstatement in Civil Employment Act, 1944. This copious documentation is an indication of the thoroughness with which the subject has been handled. The opinion may be hazarded that this book will establish itself as the standard work on the subject.

Current Land Law. By J. R. SMITH-SAVILLE, Solicitor. 1947. London: Estates Gazette, Ltd. 11s. 6d. net.

This little book will prove very useful to anyone anxious to ascertain quickly which of the numerous enactments affecting land which have come into force since the outbreak of World War II are now in force, how long they are to remain in force, or when they ceased to be in force or when they will come into force. "Land Law" is widely interpreted and the author covers not only such measures as the provisions of the Town and Country Planning Acts (both as regards their main object and as they affect compulsory acquisition of, say, agricultural land), but also some of the Defence (Finance) Regulations and other Defence Regulations, dealing, for instance, with the location of industry. A criticism which can fairly be made is that the compression seems to be somewhat uneven, undue attention being given to some enactments, such as the Landlord and Tenant (Requisitioned Land) Acts, at the expense of measures which affect more people. But where the author does not set out the law, he does tell us where it can be found; and many of us, thinking, perhaps wistfully, of the conditions which the profession must have enjoyed in ancient Persia and Medea, are well aware that finding one's law is often a more difficult task than understanding it.

Divorce Explained. By EDGAR A. PHILLIPS, LL.B. 1947. London: Victor Gollancz, Ltd. 5s. net.

This little book by the author of a number of well-known books dealing with divorce, a former official of the Divorce Registry at Somerset House, is intended as an explanation in simple language of the law of divorce, and as sound advice to those contemplating divorce proceedings. Written as it is from this angle, the reference to decided cases is, of course, restricted, but the book is, nevertheless, of value, not only to the layman who wants a clear picture of divorce law, but also to the lawyer who wishes to see the subject dealt with in non-technical language. The book sets out concisely the matrimonial relief which is now available, and the procedure before, at, and after the hearing of a petition, and it deals fully with the subjects of custody, maintenance and costs. The practice and procedure must, of course, be read in the light of the changes effected by the Matrimonial Causes Rules, 1947, and their amendments, which have taken place since the book was written.

Rayden on Divorce. Fourth Edition. Special Supplement containing the Matrimonial Causes Rules, 1947. By F. C. OTTWAY, of the Probate and Divorce Registry. 1947. London: Butterworth & Co. (Publishers), Ltd. 6s. net.

Reference should be made to this special supplement, which sets out in full the text of these rules with notes, and the various forms in use under them, and a note on costs. These rules should now be read subject to the two amendments thereto in 1947.

NOTES OF CASES

HOUSE OF LORDS

SHIP DAMAGED IN HEAVY SEAS: WAR RISK

Liverpool and London War Risks Insurance Association, Ltd. *v.* **Ocean Steamship Company, Ltd.**

Lords Thankerton, Wright, Porter, Uthwatt and Normand. 30th October, 1947

Appeal from a decision of the Court of Appeal.

A steamship insured against war risks including "the consequences of hostilities or warlike operations" had to pass through the North Atlantic in winter with a military cargo for the Middle East, part of which cargo, owing solely to military exigencies, the master consented to carry on deck. In heavy weather the deck cargo broke loose and damaged a hatch, so that the forepart of the vessel shipped a large quantity of water. Owing to the danger of submarine attack the master maintained speed while the vessel was down by the head, and, in that condition of reduced buoyancy, she shipped more water, sustaining damage in consequence. The ship also suffered damage to other parts which was not due to the ship's being down by the head, but solely due to the heavy seas themselves, accentuated by the master's zig-zagging and maintaining speed to lessen the danger from submarines.

The HOUSE held that the damage to the front hold was a war risk as it was caused also by the deliberate increase of the risk by carrying stores on deck in a voyage from one war base to another; but that the other damage, as it had been caused solely by the heavy seas, without any contributing war risk, was a peril of the seas not within the war risks policy, the fact of the ship's being zig-zagged and kept at speed constituting management of the ship in those conditions not different from that which would be required in the case of any ship, whether or not on a warlike operation, carrying an ordinary mercantile cargo in war conditions.

APPEARANCES: *Sir Valentine Holmes*, K.C., *Devlin*, K.C., and *H. L. Parker* (*Hill, Dickinson & Co.*) (appellant insurers); *Willink*, K.C., and *A. J. Hodgson* (*Bentleys, Stokes and Lowless*, for *Alsop, Stevens and Collins Robinson*, Liverpool).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HUSBAND AND WIFE: CONSUMMATION OF MARRIAGE

Baxter *v.* **Baxter**

Lords Jowitt, L.C., Wright, Merriman, Simonds and Normand 17th December, 1947

Appeal from the Court of Appeal (91 SOL. J. 220).

A wife refused to have marital intercourse unless her husband used a contraceptive. For ten years he had marital intercourse in that way, though always pleading with her to relax the condition. The husband's undefended petition for a decree of nullity was dismissed by Hodson, J., for, while he was bound by *Cowen* v. *Cowen* [1946] P. 36, to hold that the marriage had, through the wife's "wilful refusal . . . to consummate" it within the meaning of s. 7 (1) (*a*) of the Matrimonial Causes Act, 1937, not been consummated, he was of opinion that the present case was distinguishable in that the husband had acquiesced in the refusal. The Court of Appeal upheld that decision; the husband now appealed. The appeal was unanimously dismissed.

LORD JOWITT, L.C., said that on the assumption that the husband had established a ground for relief, it could not be held that anything in the husband's conduct had disentitled him, in the circumstances, from obtaining relief. *Cowen* v. *Cowen*, *supra*, was wrongly decided. Contraception was in common use: "consummate" in s. 7 (1) (*a*) of the Act of 1937 was to be construed as used in common parlance, and with due regard to existing social conditions. The proper occasion for considering the subjects raised by the appeal was when the sexual life of the spouses, and the responsibility of either or both for a childless home, formed the background to some other claim for relief.

APPEARANCES: *Beyfus*, K.C., and *S. Lincoln* (*William P. Webb*); *Karminski*, K.C., and *Colin Duncan* (*Treasury Solicitor*) (for King's Proctor).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

ESSENTIAL WORK: FIREMAN'S CHANGE OF GRADE

Duffield *v.* **Great Western Railway Co.**

Somervell, L.J., and Atkinson, J. 24th October, 1947

Appeal from Wrottesley, J. (90 SOL. J. 571; 62 T.L.R. 659).

The plaintiff was employed by the defendant company as a fireman. His contract of employment provided that he should

pass an examination before being promoted engine-driver, but that if he failed three times he should be transferred to a different grade of employment. Having failed the examination three times, he was made a shed labourer, with subsequent promotion to steam-raiser. By art. 4 (1) of the Essential Work (General Provisions) Order, 1942, " a person carrying on a scheduled undertaking shall . . . pay to every specified person " (which appellation applied to the plaintiff) " . . . not less than the normal wage . . . if that person is . . . (1) . . . available for work ; and (2) willing to perform any " [reasonable] " services outside his usual occupation . . . when work is not available for him in his usual occupation . . ." The workman's action claiming that he was entitled under art. 4 (1) to continue to be paid a fireman's wages was dismissed by Wrottesley, J. He appealed.

SOMERVELL, L.J. (ATKINSON, J., agreeing), said that art. 4 (1) of the Order was inapplicable to the case. The fallacy lay in seeking to apply it where the nature of the plaintiff's job was, as here, changed in accordance with his contract of employment. The appeal failed.

APPEARANCES : *Beney*, K.C., and *M. R. Nicholas* (*Pattinson and Brewer*) ; *Sir Valentine Holmes*, K.C., and *J. P. Ashworth* (*M. H. B. Gilmour*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

HIGHWAYS : OVERHANGING BRANCHES

G. Hale *v.* **Hants and Dorset Motor Services, Ltd. and Another**

Lord Greene, M.R., Somervell, L.J., and Singleton, J.
29th October, 1947

Appeal from Croom-Johnson, J.

While the plaintiff was travelling on the upper deck of an omnibus belonging to the first defendants the windows were smashed by the overhanging branches of a tree, and the plaintiff lost an eye as a result. The tree had been planted by the side of the highway by the second defendants, the highway authority, under s. 1 (1) of the Roads Improvement Act, 1925, s. 1 (2) of which prohibits such an authority from allowing a tree to " remain in such a situation as to hinder the reasonable use of the highway." Croom-Johnson, J., holding the driver of the omnibus also negligent, gave judgment against both defendants, who now appealed.

LORD GREENE, M.R. (with whom SOMERVELL, L.J., and SINGLETON, J., agreed), said that the tree, having thrown its branches out over the highway, hindered the reasonable use of the highway, contrary to s. 1 (2), which subsection applied in respect not only of the planting of the tree but also of its subsequent growth. It was immaterial that the branches projected only 7½ inches over the highway ; a driver was entitled to use the whole of the highway. The driver was also to blame, because, though he was not to blame for not seeing the particular overhanging branches in question, as his evidence was that he had formed the opinion that the trees growing near the side of the highway in question were potentially dangerous, he should have steered clear of them as a precaution. Appeal dismissed.

APPEARANCES : *McGougan* (*Stanley & Co.*, for *D'Angibau and Malim*, Bournemouth) ; *Beney*, K.C., and *Laskey* (*Kenneth Brown, Baker, Baker*, for *Trevanion, Curtis & Ridley*, Bournemouth) ; *J. T. Molony* (*Walmsley & Stansbury*, for *E. W. Marshall Harvey & Dalton*, Bournemouth).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SUNDAY CINEMAS : LIMITING CONDITION

Associated Provincial Picture Houses, Ltd. *v.* **Wednesbury Corporation**

Lord Greene, M.R., Somervell, L.J., and Singleton, J.
10th November, 1947

Appeal from Henn Collins, J. (91 SOL. J. 149 ; 63 T.L.R. 184).

The defendant local authority, in granting the plaintiff company a licence to hold performances at their cinematograph theatre on Sundays, imposed the condition that " no children under the age of fifteen years shall be admitted to any entertainment, whether accompanied by an adult or not." In an action challenging the validity of that condition, Henn Collins, J., held it *intra vires* and reasonable. The company appealed.

LORD GREENE, M.R. (with whom SOMERVELL, L.J., and SINGLETON, J., agreed), said that as the corporation had neither taken into consideration matters which were not for them to consider, nor come to a decision to which no reasonable authority could have come, the court had no power to interfere, for it was not entitled to substitute its own view of what was reasonable for that of the corporation. *Harman* v. *Butt* [1944] K.B. 491 was correctly decided. *Theatre de Luxe* (*Halifax*), *Ltd.* v. *Gledhill* [1915] 2 K.B. 49 had never been referred to with approval. The decision of the majority there placed too narrow a construction on the statutory provision there in question. The appeal failed.

APPEARANCES : *Gallop*, K.C., and *Sidney Lamb* (*Norman Hart & Mitchell*) ; *FitzGerald*, K.C., and *Gattie* (*Sharpe, Pritchard and Co.*, for *G. F. Thompson*, Wednesbury).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTIONS : BEDROOM WITH COOKER

Wright *v.* **Howell**

Scott, Tucker and Asquith, L.JJ. 19th November, 1947

Appeal from Barnet County Court.

The appellant was the tenant of an unfurnished room in the flat of the respondent landlord. The tenant's parents-in-law had a flat on the upper floor of the same building. The tenant originally took the room as a bedroom for himself and his wife at five shillings a week, plus one shilling a week for electricity. In August, 1946, he installed an electric cooker, having previously taken his meals with his wife in her parents' flat. The tenant and his wife had at all times been allowed to use that flat for sanitary purposes. The tenant's wife having had a baby, they thereafter slept in the parents-in-law's flat. The tenant at no time made any payments to his parents-in-law in respect of the permitted use made of their flat. The landlord having claimed possession of the room, the tenant contended that it was " part of a dwelling-house let as a separate dwelling " within the meaning of s. 12 (8) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, and that his tenancy was therefore protected. The county court judge made an order for possession. The tenant appealed.

SCOTT, L.J. (TUCKER and ASQUITH, L.JJ., agreeing), said that the room, when let to the tenant, was devoid of cooking arrangements and water supply. The word " dwelling," on its true construction, included all the major activities of life, particularly sleeping, cooking and feeding. As one of those activities, sleeping, was at all relevant times no longer being carried on there, the room was not a dwelling and the tenancy was not protected. Appeal dismissed.

APPEARANCES : *McElligott* (*Hugh Jones & Co.*) ; *P. H. M Oppenheimer* (*E. E. Pugh & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

CHARITABLE TRUSTS—*CY-PRES* DOCTRINE

In re **Lucas ; Sheard** *v.* **Mellor**

Roxburgh, J. 21st November, 1947

Adjourned summons.

E L, by her will, dated in 1942, bequeathed certain sums to " The Crippled Children's Home, Lindley Moor, Huddersfield." An institution known as the " Huddersfield Home for Crippled Children " had existed at Lindley Moor, near the home of the testatrix, from 1914 to 1939, when it was closed, and its residual funds were devoted in 1941 to a scheme for benefiting the crippled children of the neighbourhood. The question for decision was whether or not there was a valid charitable bequest.

ROXBURGH, J., said that the testatrix, when she made her will, could not have known that the home had been closed for three years. It was a question of construction, whether the legacy was designed to augment the funds of the institution, in which case it might properly be applied towards the scheme operating since the closing of the home, or whether it was a gift for the upkeep of the particular home, in which case it must fail. The point of construction lay in the debatable territory between *In re Rymer* [1895] 1 Ch. 19 ; *In re Wilson* [1913] 1 Ch. 314 ; and *In re Faraker* [1912] 2 Ch. 488. It had been contended that the 1941 scheme had made the home immortal, and that the gift could be applied *cy-près*. But this could only be if the first alternative construction were correct. The second alternative was correct, and the gift was one for the upkeep of a particular home. There was no general charitable intention, and the gift lapsed.

APPEARANCES : *T. A. C. Burgess* (*Dixon, Hunt & Tayler*, for *Cartwright & Fieldhouse*, Huddersfield) ; *C. A. J. Bonner* (*Gregory, Rowcliffe & Co.*, for *Ramsden, Sykes & Ramsden*, Huddersfield) ; *B. S. Tatham* (*Crossman, Block & Co.*, for *Eaton Smith & Downey*, Huddersfield) ; *Danckwerts, Newsom* (*the Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

CONFLICT OF LAWS : LEGITIMACY

In re **Bischoffsheim ; Cassel** *v.* **Grant**

Romer, J. 26th November, 1947

Adjourned summons.

By his will the testator left a share of his estate in trust for his granddaughter N F for life with the usual remainder to her child or children. In 1908 N F married R W, and had issue P G and M W. R W died in 1914. In 1917 she married G W, the brother of R W, and had issue R W junior. She died in 1946. The question for decision was whether R W junior was or was not entitled to a share in the trust fund. The marriage with G W took place in New York, where marriage with a deceased brother's widow was legal. The domicil of origin of both spouses was English; both had wished to acquire a domicil of choice in New York before marriage, and they had undoubtedly done so when R W junior was born in New York in 1920.

ROMER, J., said that, in general, legitimacy depended on the law of birthplace and of parents' domicil (*Fenton* v. *Livingstone* (1859), 3 Macq. 497), in accordance with which principle R W junior was legitimate, the parents having acquired a domicil of choice in New York. It had been argued that there was an exception to this principle when the marriage was incestuous or immoral, but it appeared from *In re Goodman's Trusts* (1881), 17 Ch. D. 266, and *In re Andrews* (1883), 24 Ch. D. 637, that the only exception to the rule related to claims to real estate or titles of honour, and in view of the special circumstances in *Shaw* v. *Gould* (1868), L.R. 3 H.L. 55, that case could not be regarded as an authority to the contrary. The legitimacy of the claimant being thus established, he was entitled to a share in the fund, and the validity or otherwise in English law of his parents' marriage was not relevant.

APPEARANCES: *Geoffrey Cross* (*Freshfields*); *Neville Gray*, K.C., and *J. H. A. Sparrow* (*Farrer & Co.*); *Sir Cyril Radcliffe*, K.C., and *Ungoed-Thomas*, K.C. (*Farrer & Co.*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

STATUTORY NUISANCE: LOCAL AUTHORITY DEFENDANTS

R. *v.* **Epping Justices; *ex parte* Burlinson**

Lord Goddard, C.J., Humphreys and Singleton, JJ.
18th October, 1947

Application for an order of mandamus.

The applicant complained to the respondent justices that the local authority had created a statutory nuisance consisting of an accumulation or deposit prejudicial to health within s. 92 (1) (*c*) of the Public Health Act, 1936. The justices held that they had no jurisdiction to hear that complaint against a local authority as defendants. This application was accordingly made. Section 91 of the Act imposes on local authorities the duty of abating nuisances in their area. Section 92 defines the "statutory nuisances" which may be dealt with summarily. By s. 94 (1), if a person fails to comply with an abatement notice served on him under s. 93, complaint may be made to justices, who may issue a nuisance order against him. By s. 99, "Complaint of . . . a statutory nuisance . . . may be made to a justice . . . by any person aggrieved by the nuisance, and thereupon the like proceedings shall be had, with the like . . . consequences . . . as in the case of a complaint by a local authority, but any order made in such proceedings may" after the local authority have been heard, if the court thinks fit, "direct the local authority to abate the nuisance."

LORD GODDARD, C.J. (HUMPHREYS and SINGLETON, JJ., agreeing), said that s. 99 applied both where a local authority had failed to abate a nuisance created by a private individual and where the local authority themselves were alleged to have created the nuisance. An order of mandamus to the justices to hear the complaint must accordingly be made. Application granted.

APPEARANCES: *F. H. Lawton* (*J. H. Fellowes*); *Berryman*, K.C., and *B. Lewis* (*Francis J. O'Dowd*, Chingford).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOMPLETE WORKSHOP: A "FACTORY"

Barrington *v.* **Kent Rivers Catchment Board**

Hilbery, J. 25th November, 1947

Action tried by Hilbery, J.

The plaintiff was the superintendent of the mechanical equipment of the defendant catchment board. The building itself, a new workshop for the repair of their vehicles, had been completed by the builders, but electric power was not yet laid on. The machinery to be used there was not yet in place, and required shafting, to carry which the board's superintendent of works ordered wall-brackets to be fixed. The superintendent of works instructed his men to use, for the necessary scaffolding, the boards covering one of the two inspection pits with which the new building was provided. While the boards were so removed, a lorry in need of repairing was driven into the workshop and alongside the open inspection pit. The plaintiff was thus prevented from seeing the opening, with the result that, in the course of his examination of the lorry, he stepped back from its cab, fell into the uncovered pit, was seriously injured, and brought this action.

HILBERY, J., having found the board negligent by their superintendent of works, whose duty it was, he held, to prevent danger from the pit which he had caused to be uncovered, and having negatived contributory negligence, said that, on the principle laid down by Lord Wright in *Radcliffe* v. *Ribble Motor Services, Ltd.* ([1939] A.C. 215, at p. 349), the defence of common employment was not maintainable. Section 151 (1) of the Factories Act, 1937, defined a "factory" as "any premises in which . . . persons are employed in manual labour in any process for . . . (*b*) the . . . repairing . . . of any article . . .", the condition that the work should be carried on "for purposes of gain" being, by s. 151 (9), inapplicable to premises owned by local or public authorities. By s. 25 (3) the occupiers of a factory must have all openings in a factory securely fenced. In his opinion, the premises were a factory although not yet complete. The test was whether the process of repairing vehicles could already be carried on there. The use of the premises as a workshop had in fact already begun. The board were consequently liable in damages for breach of their duty under s. 25 (3).

APPEARANCES: *Glyn-Jones*, K.C., and *P. B. Showan* (*Rye and Eyre*), *R. M. Everett* (*Hair & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 2838. **Coal Industry Nationalisation** (Satisfaction of Compensation) (No. 2) Regulations. December 31.

No. 2758. **Detention of Prisoners** (Scotland) Rules. December 15.

No. 2783. **Divorce Jurisdiction** (Singapore and Malayan Union) Order in Council. December 19.

No. 2780. **Eastern African (Appeal to Privy Council)** Order in Council. December 19.

No. 2779. **Eastern African Court of Appeal** (Amendment) (No. 2) Order in Council. December 19.

No. 2792. **Emergency Laws** (Miscellaneous Provisions) (Guernsey) Order in Council. December 19.

No. 2790. Emergency Laws (Miscellaneous Provisions) (Isle of Man) Order in Council. December 19.

No. 2791. Emergency Laws (Miscellaneous Provisions) (Jersey) Order in Council. December 19.

No. 2741. **Foreign Jurisdiction.** Nyasaland Order in Council. December 19.

No. 2742. Foreign Jurisdiction. Nyasaland Protectorate (Native Trust Land) (Amendment) Order in Council. December 19.

No. 2809. **Local Government and Civil Service** (Superannuation) Rules. December 29.

No. 2728. **Naval Forces** (Enforcement of Maintenance Liabilities) Act, 1947 (Appointed Day) Order. December 19.

No. 2720. **Public Trustee** (Fees) Order, 1948. Published January 1.

No. 2722. **Supreme Court Fees** (Amendment No. 2) Order. December 18.

No. 2785. **Tithe** (Copies of Instruments of Apportionment) (Amendment) Rules. November 17.

No. 2708. **Town and Country Planning** (General Interim Development) Varying Order No. 2. December 18.

No. 2796. Town and Country Planning (General Interim Development) (Scotland) Varying Order. December 24.

STATUTORY INSTRUMENTS, 1948

No. 3. **Statutory Instruments Act,** 1946 (Commencement) Order, 1947. December 19.

No. 2. **Statutory Instruments** (Confirmatory Powers) Order, 1947. December 19.

The Council of The Law Society announce that in the Final Examination held on 3rd, 4th and 5th November, 1947, 327 candidates out of 536 were successful. The Council have awarded the following prize: to Mr. Hyman Segal, LL.B., Leeds, who served his articles of clerkship with Mr. Herzl Segal, LL.B., Leeds, the John Mackrell Prize, value about £11.

RULES AND ORDERS

S.R. & O., 1947, No. 2785/L.40

TITHES, ENGLAND

THE TITHE (COPIES OF INSTRUMENTS OF APPORTIONMENT) (AMENDMENT) RULES, 1947, DATED NOVEMBER 17, 1947, MADE BY THE MASTER OF THE ROLLS UNDER SECTION 36 (2) OF THE TITHE ACT, 1936 (26 Geo. 5 & 1 Edw. 8, c. 43).

In pursuance of the powers conferred upon me by subsection (2) of Section 36 of the Tithe Act, 1936, I hereby make the following Rules :—

1. These Rules may be cited as The Tithe (Copies of Instruments of Apportionment) (Amendment) Rules, 1947 ; and The Tithe (Copies of Instruments of Apportionment) Rules, 1946,* and these Rules may be cited together as The Tithe (Copies of Instruments of Apportionment) Rules, 1946 and 1947.

2. These Rules shall be construed as one with The Tithe (Copies of Instruments of Apportionment) Rules, 1946.

3. The Tithe (Copies of Instruments of Apportionment) Rules, 1946, shall have effect, subject to the following amendments, that is to say—

(*a*) For Rule 10, there shall be substituted the following Rule :—

"10. The governing body of any public library or museum or historical or antiquarian society to which any diocesan or parish Copy has been or is to be transferred pursuant to these Rules, shall, upon being so required by the Deputy Keeper of the Public Records, cause to be prepared a Description in the form set out in the Third Schedule hereto containing the particulars of that diocesan or parish Copy which are therein specified, and shall forward the Description to the Deputy Keeper of the Public Records."

(*b*) For the Third Schedule, there shall be substituted the following Schedule :—

"THIRD SCHEDULE."

COUNTY	DIOCESE	DISTRICT
Tithe Document transferred by Order of the Master of the Rolls	to from	
1. Nature and Date of Document, with former Reference or Serial Number (if any) and statement whether a Map is annexed.		
2. Whether Diocesan or Parish Copy.		
3. Condition of Document.		
4. Date of transfer.		

Greene, M.R.

Dated the 17th day of November, 1947.

* S.R. & O. 1946 (No. 2091) I, 1593.

NOTES AND NEWS

Honours and Appointments

The Lord Chancellor has appointed Mr. ARCHIBALD LOY, Registrar of the Doncaster, Rotherham and Thorne County Courts and District Registrar in the District Registry of the High Court of Justice in Doncaster, to be in addition Registrar of the East Retford County Court as from 1st January, 1948.

The Lord Chancellor has appointed Mr. JOHN LEAM MIDDLETON, Registrar of the Chesterfield, Alfreton and Mansfield County Courts and District Registrar in the District Registry of the High Court of Justice in Chesterfield, to be in addition Registrar of the Worksop County Court as from 1st January, 1948.

The governing body of Rugby School has invited Sir ARTHUR FFORDE to succeed Mr. P. H. B. Lyon as head master when Mr. Lyon retires at the end of July. Sir Arthur fforde, who has accepted the appointment, was educated at Rugby, where he became head of the school and of the School House, and at Trinity College, Oxford. He was admitted in 1925, and since 1928 has been a partner in Messrs. Linklaters & Paines. He has been a member of the Council of The Law Society for the past ten years. During the war he became a temporary under-secretary in the Ministry of Supply and, later, at the Treasury. He was knighted in 1946.

Notes

The Recorder of Stamford has fixed the next Quarter Sessions for the Borough of Stamford to be held on Wednesday, 28th January, 1948, at 11.30 a.m.

The Law Students' Debating Society, held at The Law Society's Court Room, 60 Carey Street, Chancery Lane, W.C.2, announces the following programme for January :—

Tuesday, 13th January, 1948, at 7 p.m. (Chairman : Mr. F. D. Kennedy), a Moot, presided over by Mr. G. O. Slade, K.C.

Tuesday, 20th January, 1948, at 7 p.m. (Chairman : Mr. J. E. Terry) : joint Debate with the Sylvan Debating Club : "That this House would welcome the dissolution of the United Nations Organisation."

Tuesday, 27th January, 1948, at 7 p.m. (Chairman : Miss Ruth Eldridge) : "That the case of *Winter Garden Theatre (London), Ltd.* v. *Millenium Productions, Ltd.* [1947] 2 All E.R. 331, was wrongly decided."

PUBLIC TRUSTEE : FEES

As already briefly noted at p. 14, *ante*, an order has been made increasing the fees of the Public Trustee as from 1st January, 1948. The order (S.R. & O., 1947, No. 2720/L.38) is too long to reproduce in full, but the following notes indicate its main purport :—

The Public Trustee Act, 1906, requires that the fees charged in respect of the Public Trustee's duties shall be arranged to produce an annual amount sufficient to meet the working of the Act and no more.

The scale of fees fixed in 1926 has remained unaltered since that date and, in view of the very heavy increase since 1926 of all costs of administration, it has naturally become inadequate for its purposes. The new Fees Order therefore provides for an increase of approximately 33⅓ per cent. in the Public Trustee's revenue.

The principal alterations effected by the new order are as follows :—

(*a*) An increase in the scales of capital fees on acceptance, and a small additional fee on the value of freehold or leasehold property (other than settled land). The necessity for the last-mentioned fee arises from the present complexity of managing such property.

(*b*) The capital fee on withdrawal is increased from ½ to 1 per cent., with a sliding scale reduction on trusts over £200,000 in value.

(*c*) Income fees : there is no increase where the trust income is £500 a year or less, or in any case where income goes direct from source to the beneficiary or his bank.

Where the income is collected by the Public Trustee and paid over by him, the fee is fixed at 2 per cent. on the first £2,000 of annual income and 1 per cent. on the excess over £2,000.

(*d*) The distinction previously made between strict trustee and other investments for fee purposes no longer applies and the old 6s. per £100 rate will apply in all cases of sales and purchases of investments.

Pamphlets containing full information as to the new fees and generally as to the Public Trustee's powers and duties are in preparation and will shortly be obtainable on application, either personally or in writing, to the Public Trustee, Kingsway, London, W.C.2, or to the Deputy Public Trustee, Arkwright House, Manchester, 3.

OBITUARY

MR. F. B. McDONOGH

The death has occurred in Tuam, County Galway, of Mr. Frederick B. McDonogh, who was admitted a solicitor in 1905, and practised in Tuam and the surrounding areas. He was Coroner for North Galway. Mr. McDonogh was elected to the Dail in 1932, but was defeated at the next following election.

MR. J. T. TIMMINS

Mr. James Taylor Timmins, solicitor, of Messrs. Titley, Long and Co., of Bath, died on 23rd December, 1947. He was admitted in 1904.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices : 88–90, Chancery Lane, London, W.C.2. Telephone : Holborn 1403.

Annual Subscription : £3 inclusive (payable yearly, half-yearly or quarterly in advance).

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